

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (hereinafter called, the “Agreement”) is made and entered into as of October 3, 2023, by and between City of La Crosse (hereinafter called “Client”) and Application Software, Inc., dba ASI and ASIFlex (hereinafter called “ASIFlex”).

Background

Check applicable boxes

For Cafeteria Plan. Client has requested ASIFlex to provide administrative services for the following Benefit Programs, as described in Attachment A, offered under an Internal Revenue Code §125 Cafeteria Plan established by Client:

- Premium Payment Plan (PPP)
- Health Flexible Spending Arrangement (Health FSA)
- Dependent Care Assistance Program (DCAP)
- HSA Contribution Benefit

For Health Reimbursement Arrangements (HRA). Client has requested ASIFlex to provide administrative services for the Health Reimbursement Arrangement established under Revenue Ruling 2002-41 and Notice 2002-45 as described in Attachment A.

For Transportation Reimbursement Accounts (TRA). Client has requested ASIFlex to provide administrative services for the Transportation Reimbursement Account and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f) as described in Attachment A.

For LifeStyle Benefits Accounts (LSA). Client has requested ASIFlex to provide administrative services for the taxable LifeStyle Benefit Accounts (LSA) as described in Attachment A. LSA benefits are not intended to qualify for a tax exclusion under the Internal Revenue Code. Client agrees to comply with the provisions of Appendix B “Lifestyle Benefit Account (LSA) Compliance Considerations Appendix”.

The PPP, Health FSA, DCAP, LSA, and HSA Contribution Benefit will hereinafter be collectively referred to as the Program.

If services are provided for a Health FSA or HRA ASIFlex may be considered a “business associate” under HIPAA with regard to some of the programs. If applicable, there is a separate agreement between the Client and ASIFlex to document compliance with HIPAA's privacy, security, and electronic data interchange (EDI) requirements (Business Associate Agreement).

In consideration of the mutual promises and conditions contained in this Agreement, Client and ASIFlex agree as follows:

**Section 1
Effective Date and Term**

1.1 Effective Date

The effective date of this Agreement is January 1, 2024 (hereinafter called “Effective Date”).

1.2 Term

The term shall be three (3) years commencing on the Effective Date.

Section 2 Scope of Undertaking

2.1 Scope of Undertaking

Client has sole and final authority to control and manage the operation of the Program. ASIFlex is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Client. ASIFlex and Client shall not be deemed partners, engaged in a joint venture, or governed by any legal relationship other than that of independent contractor.

ASIFlex does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission, or breach of duty by Client. ASIFlex shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASIFlex generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Program.

Client is solely responsible for any applicable income and employment tax withholding as well as the associated W-2 and related reporting to the IRS and state agencies (as applicable) regarding any payments from any Account that are not excluded from gross income by the Internal Revenue Code and the regulations issued thereunder (as determined solely by the Client). ASIFlex and its Affiliates do not assume any responsibility for compliance with federal or state laws, including federal tax laws and regulations, applicable to the Client or any Employee Benefit Plan.

Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute ASIFlex as a party to the Program or to confer upon ASIFlex any authority or control respecting management of the Program, authority, or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon ASIFlex any obligation to any employee of Client or any person who is participating in the Program (Participant).

2.2 Non-Discretionary Duties

Except as otherwise expressly set forth herein, the services to be performed by ASIFlex under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Programs established by the Client.

2.3 Limited Fiduciary Duties *(Applies to Health FSA or HRA only)*

Notwithstanding the foregoing, pursuant to Section 405(c)(1) of ERISA, Client delegates to ASIFlex certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 4, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits claims as set forth in Section 6, as further modified by Attachment A.

The parties agree that ASIFlex is fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. ASIFlex shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

Section 3 Client's Responsibilities

3.1 General Fiduciary Duties

Except as otherwise specifically delegated to ASIFlex in this Agreement, Client has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing, and interpreting the provisions of the Program and making all determinations thereunder. Client gives ASIFlex the authority to act on behalf of Client in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Client and ASIFlex. Client is considered the Plan Administrator and Named Fiduciary of the Program benefits which are subject to ERISA.

3.2 Funding

Client shall promptly fund an account maintained for the payment of Program benefits as described in Section 6.

3.3 Information to ASIFlex

Upon request, Client agrees to provide ASIFlex with information necessary for ASIFlex's performance of duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. ASIFlex shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Client or its agents. Such information shall be provided to ASIFlex in the time and the manner agreed to by Client and ASIFlex. ASIFlex shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update such information.

Client also agrees to provide ASIFlex with frequent updated reports summarizing eligibility data (Eligibility Reports). Unless otherwise agreed by Client and ASIFlex, the Eligibility Reports should be provided to ASIFlex by electronic medium. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Program.

Client shall be responsible for ensuring the accuracy of its Eligibility Reports and bears the burden of proof in any dispute with ASIFlex relating to the accuracy of any Eligibility Reports.

ASIFlex incurs no liability to Client or any Participant as a consequence of an inaccurate Eligibility Report. Additionally, ASIFlex is under no obligation to credit Client for any claims expenses or administrative fees incurred or paid to ASIFlex as a consequence of Client failing to review Eligibility Reports for accuracy.

ASIFlex shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Eligibility Reports are considered Protected Health Information (PHI) and, when transmitted by or maintained in electronic media shall be considered electronic PHI, and subject to the Privacy and Security Rules under HIPAA, and Section 5 of this Agreement.

3.4 Plan Documents

Client is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide ASIFlex with all relevant documents, including but not limited to, the Program documents and any Program amendments. Client will notify ASIFlex of any changes to the Program at least 30 days before the effective date of such changes.

If requested by Client in Section 4.8, ASIFlex will provide sample plan documents and forms for review by Client and Client's legal counsel, including plan document/summary plan description, election forms, and other documents. ASIFlex will customize such documentation only to the extent to incorporate Client's responses to certain plan design questions submitted by ASIFlex. In addition, ASIFlex will provide sample document changes to reflect revisions in applicable legislation or regulations. Although ASIFlex has taken steps to ensure that its sample documents and forms are of high quality and generally comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to the Client or the Program.

Client acknowledges that ASIFlex is not providing tax or legal advice and that Client should ask its legal counsel to review such documents for legal and tax compliance. Client bears sole responsibility for determining the legal and tax status of the Program. Further, ASIFlex is not a law firm and has no authority to provide legal advice.

3.5 Liability for Claims

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of Client under the Program. Except for expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

3.6 Financial and Medical Records

In order to permit Client and/or ASIFlex to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, the Client must either, in accordance with applicable state and federal law:

- Notify each Participant and provide each Participant an opportunity to opt out (if required); or
- Obtain from each Participant written authorization for release of the requested records.

3.7 HIPAA Privacy

Client shall provide ASIFlex with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Certification that Client amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to Client for plan administrative purposes;
- Certification that Client agrees to the conditions set forth in the plan amendment;
- Copies of any authorizations of Participants or beneficiaries to use or disclose PHI (and any later changes to or revocations of such authorizations);
- Notice of any restriction on the use or disclosure of PHI that Client agrees to under the Privacy Rule; and
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that Client agrees to under the Privacy Rule.

Client shall not request ASIFlex to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by Client, except that ASIFlex may use or disclose PHI for purposes of Data Aggregation and the management and administrative activities of ASIFlex, as provided in Section 5 of this Agreement.

Section 4 ASIFlex's Responsibilities

4.1 Delegated Responsibilities

ASIFlex's responsibilities shall be as expressly delegated to ASIFlex in this Agreement (including the obligations listed in any Attachment to this Agreement) or any other written and signed Agreement between Client and ASIFlex. ASIFlex generally provides certain reimbursement and recordkeeping services, as described further below.

4.2 Service Delivery

ASIFlex agrees to provide customer service personnel by telephone during ASIFlex's normal business hours. ASIFlex also agrees to provide electronic administrative services 24 hours per day, 7 days per week. However, ASIFlex websites shall occasionally be unavailable in cases of required maintenance. Scheduled maintenance notices will be published in advance of closure.

ASIFlex will not be deemed in default of this Agreement, nor held responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

4.3 Benefits Payment

ASIFlex agrees to, on behalf of Client, operate under the express terms of this Agreement and the Program. ASIFlex makes the initial determination if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Section 4.

Check this box if the following paragraph is applicable

- Client will be responsible for processing Prior Reimbursement Requests (including any run-out claims submitted after the Effective Date) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements;

OR *Check this box if the following paragraph is applicable*

- ASIFlex will be responsible for processing run-out claims submitted after the Effective Date and maintaining legally required records for such run-out claims.

4.4 Bonding

ASIFlex has, and will maintain, a fidelity bond and/or ERISA bond (where applicable) for all persons involved in collecting money or making claim payments, and all officers of the company. This bond covers the handling of Client's and Participants' money and must protect such money from losses by dishonesty, theft, forgery or alteration, and unexplained disappearance.

4.5 Reporting

ASIFlex agrees to make available to Client each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month.

For those Program benefits subject to HIPAA, Client must provide certification that the plan document requires the Client to comply with applicable Privacy and Security Rules under HIPAA before ASIFlex will make available the reports provided for in this Section to the Client. ASIFlex agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

For those Program benefits subject to HIPAA, Client is responsible for ensuring that any beneficiary of the Participant who submits a claim agrees to the disclosure of PHI to the Participant if required by the Privacy Rule.

4.6 Claims Appeals

ASIFlex agrees to refer to Client or its designee, Plan Administrator, and/or Named Fiduciary for the following:

- The second and final level of appeal of an adverse benefit determination; and
- Any class of claims Client may specify, including:
 - Questions of eligibility or entitlement of the claimant for coverage under the Program;
 - Questions with respect to the amount due; or
 - Any other appeal.

4.7 Forfeited Funds

Any unclaimed benefit payments (e.g. uncashed benefit checks) are deemed forfeited.

Check this box if the following paragraph is applicable

- Client may use forfeited funds to offset reasonable administrative expenses.

OR Check this box if the following paragraph is applicable

- Upon approval of Client, ASIFlex shall tender any remaining forfeited funds (after payment of administrative expenses) to the state unclaimed property fund.

4.8 Additional Documents

Check this box if the following paragraph is applicable

- Client requests that ASIFlex furnish Client with Sample documents for review by Client with its legal counsel, for the creation of customized documentation for the Program to be approved and executed by Client, including summary plan description, plan document, and plan amendments; and sample administrative forms needed for ASIFlex to perform its duties under this Agreement.

OR Check this box if the following paragraph is applicable

- Client will be responsible for the creation and maintenance of its own plan documents, including summary plan description, plan document, and plan amendments. Client will provide ASIFlex with a copy of such documents for administration purposes.

4.9 Communication

ASIFlex agrees to provide development of certain communication information.

4.10 Recordkeeping

ASIFlex agrees to maintain for the duration of this Agreement the usual and customary books, records, and documents ASIFlex has prepared or received possession of in the performance of its duties hereunder. These books, records, and documents, including electronic records, are the property of Client, and Client has the right of continuing access to them during normal business hours at ASIFlex's offices with reasonable prior notice. If this Agreement terminates, ASIFlex may deliver, or at Client's request, will deliver all such books, records, and documents to Client, subject to ASIFlex's right to retain copies of any records it deems appropriate. Client shall be required to pay ASIFlex reasonable charges for transportation or duplication of such records.

4.11 Standard of Care; Erroneous Payments

ASIFlex shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If ASIFlex makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, ASIFlex shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, ASIFlex will not be liable for such payment, unless ASIFlex would otherwise be liable under another provision of this Agreement.

ASIFlex owes a duty of care only to the Client, which duty is one of reasonable care under the attendant circumstances. ASIFlex is not liable for any mistake of judgment or for any action taken in good faith unless such mistake or action results in a breach of such duty of care.

4.12 Notices to Client

ASIFlex shall provide to Client all notices (including any required opt-out notice) reflective of its privacy policies and practices as required by state and/or federal law (including the Gramm-Leach-Bliley Act).

Section 5 Compliance with Privacy and Security Rules under HIPAA

Applies to All Services, except DCAP, LSA, and TRA

5.1 Compliance with Privacy and Security Rules under HIPAA

Contemporaneously with this Agreement, Client and ASIFlex have entered into a Business Associate Agreement pursuant to HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Section 6 Payment of Benefits and Funding Responsibility

Applies to Health FSA, DCAP, HRA, LSA, and TRA

6.1 Payment of Benefits

Client authorizes ASIFlex to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of Client for the payment of Program benefits. Each week or at such other interval as mutually agreed upon, ASIFlex will notify Client of the amount needed to pay approved benefit claims and Client shall pay or transfer into the bank account the amount needed for the payment of Program benefits. Client shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section. ASIFlex has sole authority to provide whatever notifications, instructions, or directions are necessary to accomplish the disbursement of such Program funds to, or on behalf of, Participants in payment of approved claims.

6.2 Funding of Benefits

Funding for any payment on behalf of the Participants under the Program, including, but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Client, and Client agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Program, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the terms of this Agreement.

6.3 Banking Arrangements

Client further represents and agrees that:

- Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits plans (or any entity performing services for Client or such plans) nor any of its predecessors, successors, or assigns have represented, or will represent to any Participant or beneficiary of the Program, that a separate account, fund, or trust is being held on behalf of the Program that may be used to provide or secure benefits under the plan; and
- Client shall advise the Participants and beneficiaries of the Program that the benefits under the Program shall at all times be paid out of the general assets of the Client.

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of the Client under the Program. Except for expenses required for ASIFlex to be in the business of providing services under this Agreement and expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

6.4 Debit Card (If requested)

ASIFlex agrees to:

- Process debit card swipes reported to ASIFlex on behalf of the Client;
- Request receipt notification on all swipes not eligible for electronic adjudication under the current IRS guidelines;
- Report to the debit card provider any account reimbursements that are a result of activities mentioned above; and
- Request data from debit card providers each business day to ensure participants are properly reimbursed for their expenses.

Any interchange shared between the debit card provider and ASIFlex will be retained wholly by ASIFlex. Any fees charged to ASIFlex by the debit card provider shall be the responsibility of ASIFlex, unless noted in Attachment A of this Agreement. ASIFlex currently contracts with WEX Health for the ASIFlex Debit Card. Under this Agreement, ASIFlex reserves the right to change card providers during the year, providing at least 90 day notice to the Client.

Section 7 Indemnification

7.1 Indemnification by Client

Upon ASIFlex's adherence to the standard of care set forth in Section 4, Client shall indemnify ASIFlex and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of Client in connection with the performance of its duties hereunder. In addition, Client shall indemnify ASIFlex and hold it harmless from and against any liability, expense, demand, or other obligation, resulting from, or out of any premium charge, tax, or similar assessment (federal or state), for which the Program or Client is liable.

Client agrees to reimburse ASIFlex for all attorney's fees and costs incurred by ASIFlex as a result of any collection action taken by ASIFlex to recover overdue service charges required to be paid in accordance with this Agreement or any Attachment hereto.

7.2 Indemnification by ASIFlex

Upon Client's adherence to the standard of care set forth in Section 3, ASIFlex shall indemnify Client and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees, or other obligations, resulting from, or arising out of, any act or omission of ASIFlex in connection with the performance of its duties hereunder.

Section 8 Service Charges

8.1 Service Charges

The amounts of the monthly services charges of ASIFlex are described in the Attachments. It is ASIFlex's intention that the service charges will never increase during the life of the contract. However, if circumstances arise that require ASIFlex to change the amount of such service charges, then ASIFlex will provide at least 90 days written or electronic notice to Client. ASIFlex may also change the monthly service charges as of the date any substantial change is made in the Program.

8.2 Billing of Service Charges

All services charges of ASIFlex, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims so that proper accounting can be made by Client of the respective amounts paid for claims and administrative expenses.

8.3 Payment of Service Charges

ASIFlex will determine all service charges under this Section and bill Client monthly. Alternatively, if the parties agree, ASIFlex may deduct payment for monthly service charges from the bank account maintained by Client as described in Section 6. Client shall make payment to ASIFlex within 10 business days of receipt of notice of the amount due, or such amount will automatically be deducted from the bank account maintained by Client as described in Section 6.

Section 9 General Provisions

9.1 Severability; Headings

If any term of this Agreement is declared invalid by a court, the invalid term will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

9.2 Compliance; Non-Waiver

Failure by Client or ASIFlex to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 9 below.

9.3 Assignment; Amendment

Neither Client nor ASIFlex can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Client and ASIFlex.

9.4 Audits

Each party is authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an

agent of either party provided such agent signs an acceptable confidentiality agreement and business associate agreement required by HIPAA and the HITECH Act. Each party agrees to provide reasonable assistance and information to the auditors. Each party also agrees to provide such additional information and reports as the other party shall reasonably request.

9.5 Non-Disclosure of Proprietary Information

- **General.** Client and ASIFlex each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, proprietary and/or confidential information of such party. Client and ASIFlex agree that each party shall:
 - Keep such proprietary and/or confidential information of the other party in strict confidence;
 - Not disclose proprietary and/or confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and
 - Not use proprietary and/or confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
- **Confidential Information Defined.** Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof:
 - If, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or
 - If the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.

For purposes of this Section, confidential information is any information in written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of this Section 9 shall survive the termination of this Agreement.

9.6 Dispute Resolution; Arbitration

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the parties' Chief Executive Officers (or their designees) meet in person within 30 days of written notice of dispute issued by either party. In the event the dispute is not resolved after reasonable efforts by the Chief Executive Officers within such 30 day period, either party may then proceed to arbitration under this Section. All disputes, controversies, or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the Client and ASIFlex. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction thereof.

Arbitration shall take place in Missouri, or at a location mutually agreed upon by the parties. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render his/her determination in a manner consistent with the terms of this Agreement, and the arbitrator shall not be entitled to award punitive or exemplary damages.

9.7 Notices and Communications

- **Notices.** All notices and communications required by this Agreement shall be in writing at the address(es) specified by each party. Such notices and communications shall be given by: (a) in-person delivery, (b) guaranteed overnight prepaid nationally-recognized courier service with tracing capabilities, (c) by first-class, registered, or certified mail, postage prepaid, and addressed to the party to be notified; or (d) pdf attachment to email with electronic confirmation of receipt by the receiving party. Either party may change its address for notice by giving notice to the other at the address provided below. All notices provided for herein shall be deemed given or made when received.
- **Addresses.**
 - o Client's address for notices as described above is:

ATTN: Audra Bloom
400 La Crosse Street
La Crosse, WI 54601
 - o ASIFlex's address for notices as described above is:

ATTN: John Riddick
201 W. Broadway, Suite 4-C
Columbia, MO 65203
- **Communications.** Client agrees that ASIFlex may communicate confidential, protected, privileged, or otherwise sensitive information to Client through a named contact designated by Client (such person hereinafter called "Named Contact") and specifically agrees to indemnify ASIFlex and hold it harmless:
 - o For any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail, or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and
 - o From any claim for the improper use or disclosure of any PHI by ASIFlex if such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

9.8 Termination of Agreement

- **Automatic.** This Agreement automatically terminates on the earliest of the following:
 - o The effective date of any legislation which makes the Program and/or this Agreement illegal;
 - o The date Client or ASIFlex becomes insolvent, bankrupt, or subject to liquidation, receivership, or conservatorship; or

- The termination date of the Program. This termination is subject to any Agreement between Client and ASIFlex regarding payment of benefits after the Program is terminated.
- **Optional.** This Agreement may be terminated as of the earliest of the following:
 - By ASIFlex upon the failure of Client to pay any service charges within 10 business days after they are due and payable as provided in Section 8;
 - By ASIFlex upon the failure of Client to perform its obligations, including its obligations as Plan Administrator and/or Named Fiduciary where applicable, as such terms are defined in ERISA, and in accordance with this Agreement, including the provisions of Section 3;
 - By Client upon the failure of ASIFlex to perform its obligations in accordance with this Agreement, including the provisions of Section 4;
 - By either Client or ASIFlex, as of the end of the term of this Agreement, by giving the other party 30 days written notice; or
 - By either Client or ASIFlex, upon a material breach of the other party's duties under this Agreement, or upon non-material breaches of a recurrent nature, after 30 days notice in the event of a material breach, or 60 days notice in the event of a non-material breach of a recurrent nature, and the right to cure such breach by the breaching party.
- **Limited Continuation After Termination.** If the Program is terminated, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of Program benefits, expenses, or claims incurred before the date of Program termination. In addition, Client and ASIFlex may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by ASIFlex before the date of such termination.

If this Agreement is continued in accordance with this subsection, Client shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge.

- **Survival of Certain Provisions.** Termination of this Agreement does not terminate the rights or obligations of either party arising out of the period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

9.9 The City of La Crosse's Standard Terms and Conditions

Client's Standard Terms and Conditions are attached hereto and are fully incorporated into this Agreement with full force and effect.

9.10 Complete Agreement; Governing Law

This Agreement (including the Attachments) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior Agreements and representations between the parties. This Agreement shall be construed, enforced, and governed by the laws of the State of Wisconsin.

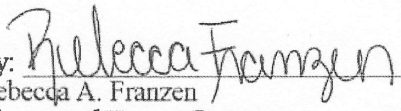
In Witness Whereof, Client and ASIFlex have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

CLIENT:

City of La Crosse

Application Software, Inc.,

a Missouri corporation

By: 
Rebecca A. Franzen
Director of Human Resources

By: 
Ashlee Sorber
Vice President & General Counsel

Glossary

For the purposes of this Agreement, the following words and phrases have the meanings set forth below. Wherever appropriate, the singular shall include the plural and the plural shall include the singular.

Agreement means this ASIFlex Administrative Services Agreement, including all Attachments hereto.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

Client has the meaning given in the Recitals.

Code means the Internal Revenue Code of 1986, as amended.

DCAP has the meaning given in the Recitals.

Eligibility Reports has the meaning described in Section 3.

Client has the meaning given in the recitals.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Effective Date has the meaning given in Section 1.

Electronic PHI has the meaning assigned to such term under HIPAA.

Health FSA has the meaning given in the Recitals.

HIPAA means the Health Insurance Portability and Accountability Act of 1996, as amended.

LSA means a lifestyle spending account established by the Client for the purpose of reimbursing expenses that do not otherwise qualify for an exclusion from gross income by the Internal Revenue Code

Named Fiduciary means the named fiduciary as defined in ERISA §402(a)(1).

Participant has the meaning given in Section 2.

Plan means the Health FSA or DCAP, as applicable.

Plan Administrator means the administrator as defined in ERISA §3(16)(A).

Prior Administration means services arising before the Effective Date.

Prior Reimbursement Requests means claims incurred before the Effective Date.

Program has the meaning given in the Recitals.

Protected Health Information or PHI has the meaning assigned to such term under HIPAA.

**ATTACHMENT A
SERVICE CHARGES**

Capitalized terms used in this Attachment but not defined have the meanings given in the Agreement to which this Attachment is attached.

Client has established a Code §125 Cafeteria Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions. Client has delegated certain administrative responsibilities with respect to the selected benefit options. Depending upon the benefit options chosen by the Client, the Client has established:

- ✓ a Code §125 Cafeteria Plan under which a Code §105 Health FSA is offered;
- ✓ a Code §125 Cafeteria Plan under which a Code §129 Dependent Care Assistance Program is offered;

As set forth in Section 8, the applicable service charges shall be as follows:

Standard Services Charges*	Cost
FSA PPPM** Service Charge	\$2.76
HRA PPPM Service Charge	
TRA PPPM Service Charge	
LSA PPPM Service Charge	

Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included at no charge
Staff Training	Included at no charge
Online Enrollment	Included at no charge
Open Enrollment Meetings – Notes:	\$250 per day, plus travel expenses
Non-discrimination Testing (Must be requested by Client)	Included at no charge
Form 5500 Preparation (Must be requested by Client)	Included at no charge
Debit Card (Must be requested by Client)	Included at no charge

***There is a \$75.00 per month minimum service charge.**

****PPPM = per participant per month**

If the Client terminates the services, there will be a charge for a runoff period, should the Client choose to request one. This charge will be negotiated at the time of termination.

Services Included

Client is responsible for all legal requirements and administrative obligations with regard to the benefit options selected, except for the following administrative duties specifically delegated to ASIFlex:

- ASIFlex shall make available (by electronic medium and paper copy) enrollment forms and instructions.
- Upon receiving instructions from Client with regard to a Participant's change in status or other event that permits an election change under IRS regulations, ASIFlex shall make the requested change in the Participant's election as soon as possible.
- If requested, ASIFlex shall prepare the information necessary to enable Client to satisfy its Form 5500 filing obligation with regard to the Health FSA options chosen by Client. Client shall be responsible for reviewing the information provided by ASIFlex to ensure its accuracy, and Client shall prepare and submit any Form 5500.
- If requested, ASIFlex shall assist Client in preparing preliminary, mid-year, and final nondiscrimination tests for the PPP, Health FSA, DCAP, and HRA options chosen by Client:
 - Key employee concentration testing required under Code §125;
 - The 55% average benefits test required under Code §129; and
 - The 25% shareholder concentration test required under Code §129.
- ASIFlex shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due normally within 3 days, but in no case later than within 30 business days, of the day on which ASIFlex receives the claim. Benefit payments shall be made by check or ACH payable to the Participant. Claims of less than \$25.00 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$25.00, except that any remaining amount shall be paid after the end of the Plan Year without regard to the \$25.00 threshold.
- ASIFlex shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim. ASIFlex shall follow the requirements of ERISA with regard to denial of claims.
- ASIFlex shall provide its standard reporting package for exchanging information.

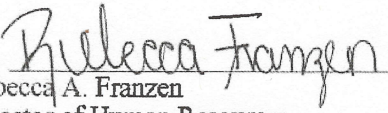
Services Not Included

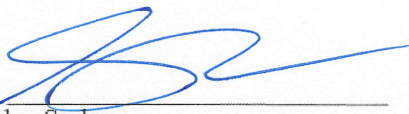
- Client's compliance with COBRA portability provisions (unless specifically selected within the Agreement).
- Determining whether Client's PPP, Health FSA, DCAP, HRA, LSA, and TRA documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.

- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the PPP, Health FSA, and DCAP.
- Client's responsibility for the determination on the second and any final level of appeal.

CLIENT:
City of La Crosse

Application Software, Inc.,
a Missouri corporation

By: 
Rebecca A. Franzen
Director of Human Resources

By: 
Ashlee Sorber
Vice President & General Counsel

STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.

11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
- 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
- 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
- 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. **NOTIFICATION.** Contracting Party shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
- (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
- (3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. **SUBCONTRACTING.** None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse

26. **NON-DISCRIMINATION.** Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. **POLITICAL ACTIVITIES.** Contracting Party shall not engage in any political activities while in performance of any and all services and work under this Agreement.

28. **GOVERNMENTAL APPROVALS.** Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

29. **ENTIRE AND SUPERSEDING AGREEMENT.** This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of La Crosse, granting approvals or conditions attendant with such approval, the specific action of La Crosse shall be deemed controlling. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. **AMENDMENT.** This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

31. **IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE.** Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of La Crosse. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.

32. **TIME COMPUTATION.** Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. **NOTICES.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one

(1) business day after depot with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

34. **INCORPORATION OF PROCEEDINGS AND EXHIBITS.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by La Crosse, including but not limited to adopted or approved plans or specifications on file with La Crosse, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.

35. **ACCESS TO RECORDS.** Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. La Crosse, or any of its duly authorized representatives, shall have access, at no cost to La Crosse, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

36. **PUBLIC RECORDS LAW.** Contracting Party understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contracting Party agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. Additionally, Contracting Party agrees to indemnify and hold harmless La Crosse, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Contracting Party's actions or omissions which contribute to La Crosse's inability to comply with the Public Records Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

37. **CONSTRUCTION.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

38. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

39. **COMPLIANCE WITH LAW.** The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

40. **FORCE MAJEURE.** La Crosse shall not be responsible to Contracting Party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

41. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

42. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

43. **EXECUTION OF AGREEMENT.** Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

44. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

45. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Revised: 10-07-08